FILE COPY

Office Supreme Court, U.S.
FILED
FEB 25 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 43

HARRY R. THOMAS, Executor of the Estate of Crandal Mackey, deceased, *Petitioner*

v.

COMMONWEALTH OF VIRGINIA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

CORNELIUS H. DOHERTY
1019 Vermont Ave., N. W.
Washington, D. C.
Attorney for Petitioner

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Petition	1
Basis of the Court's Jurisdiction	2
Questions Presented	2
Statement of Case	3
Argument	5
The Decision in This Case, in Holding That the Cash Was Intangible Personal Property, is in Direct Conflict With a Decision of This Court	5
The Assessment of an Inheritance Tax by the State of Virginia, Supported by the Judgment of Its Court, on the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in Cash, in the District of Columbia, Was a Taking of Property Without Process of Law and in Violation of Petitioner's Rights Under the Fourteenth Amendment	7

CASES CITED

Blodgett v. Silberman, 277 U. S. 1, 48 S. Ct. Re. 410	2, 4, 6, 8, 9
Frick, et al. v. Pennsylvania, 268 U. S. 473, 45 S. Ct. Re. 603	8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

HARRY R. THOMAS, Executor of the Estate of Crandal Mackey, deceased, *Petitioner*

v.

COMMONWEALTH OF VIRGINIA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

The petition of Harry R. Thomas, Executor of the Estate of Crandal Mackey, deceased, for a writ of certiorari to the Circuit Court of Arlington County, Virginia, from a final judgment entered on the 27th day of November, 1959, against your petitioner in the sum of Sixty-Five Hundred Eighty-Two Dollars and Ninety-Three Cents ($6582.93), with interest at one per centum per month from June 30, 1958, until paid, being the balance due the Commonwealth of Virginia for inheritance tax on the Estate of Crandal Mackey, respectfully shows:

The memorandum opinion of the trial judge has not been officially reported but a copy is appended to this petition.

BASIS OF THE COURT'S JURISDICTION

The jurisdiction of this Court is based on Title 28, U. S. C. A., Section 1257 (3).

The judgment of the Circuit Court of Arlington County, Virginia, is in conflict with the decision of this Court in *Blodgett* v. *Silberman*, 277 U. S. 1, 48 S. Ct. Re. 410.

This petition raises the question as to whether the action of the Circuit Court of Arlington County, Virginia, in deciding that Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in cash, in a safe deposit box in the name of the decedent in a bank in the District of Columbia, on which inheritance tax was paid to the District of Columbia, was intangible personal property and a proper subject of assessment for inheritance tax by the State Tax Commission of Virginia, was a taking of property without due process of law and a violation of petitioner's rights under the Fourteenth Amendment to the Constitution of the United States.

QUESTIONS PRESENTED

Was the Circuit Court of Arlington County, Virginia, in error in holding that the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in cash, in a safe deposit box in the District of Columbia, in the name of the decedent at the time of his death, was intangible personal property and a proper subject of assessment for inheritance tax pur-

poses by the State Tax Commission of Virginia, the domicile of the decedent?

Was the action of the State Taxing authority of the Commonwealth of Virginia, in assessing the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in cash, in the District of Columbia as intangible personal property and subject to the payment of an inheritance tax in Virginia, supplemented by the judgment of the Circuit Court of Arlington County, Virginia, a taking of property without due process of law in violation of petitioner's rights under the Fourteenth Amendment?

STATEMENT OF CASE

Crandal Mackey, a member of the bar of this Court, of Virginia, and the District of Columbia, where he maintained his office until his last illness, died March 31, 1957, domiciled in Arlington County, State of Virginia, and letters testamentary were granted to Harry R. Thomas, as the Executor named in his will, by the Circuit Court of Arlington County, Virginia.

Ancillary letters were also granted to Harry R. Thomas in the District of Columbia.

Among the assets of the estate was the sum of Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars in United States currency located in a safe deposit box in his name in the Second National Bank in Washington, D. C.

The taxing authority of the District of Columbia concluded that this cash was a tangible asset of the decedent's estate and included it in its assessment of inheritance tax due the District of Columbia, and your petitioner paid this tax.

The State Tax Commission for Virginia declared that the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars was an intangible asset of the estate and that it should be assessed as a part of the estate for inheritance tax purposes and assessed the tax at Twenty Thousand Three Hundred Seventy-Eight Dollars and Twenty-Six Cents ($20,378.26). Your petitioner paid the sum of Thirteen Thousand Seven Hundred Ninety-Five Dollars and Thirty-Three Cents ($13,795.33), the amount due excluding the tax on the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, leaving a balance of of Sixty-Five Hundred Eight-Two Dollars and Ninety-Three Cents ($6582.93).

An application for relief from such assessment, under the provisions of Title 58, Section 182 of the 1950 Code of Virginia, was filed in the Circuit Court of Arlington County, Virginia. It contained, among other things, in paragraph 5 (c), the statement that the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars was tangible personal property not located within the State of Virginia and that it was not a proper subject of assessment for inheritance taxes by the State Tax Commission of Virginia, and that such assessment is in violation of the laws of the United States in that it is lacking in due process of law and denies to your petitioner the equal protection of law guaranteed to him by the Constitution. Appendix 2a.

The matter was argued on bill and answer and your petitioner contended that on the basis of the decision of this Court in *Blodgett* v. *Silberman*, supra, that the cash in the District of Columbia was tangible personal property assessable in the District of Columbia and that any attempt by the taxing authority of the Com-

monwealth of Virginia to levy a tax on this property would violate the due process clause of the Fourteenth Amendment.

On June 3, 1959, a memorandum was filed by William D. Medley, Judge, holding that the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in currency in the safe deposit box in the Second National Bank in the District of Columbia at decedent's death, was intangible personal property and a proper subject of assessment for inheritance tax by the State Tax Commission of Virginia, and a judgment entered thereon against your petitioner in the sum of Sixty-Five Hundred Eighty-Two Dollars and Ninety-Three Cents ($6582.93), with interest at one per centum per month from June 30, 1958, until paid. Appendix 7a.

A petition for the allowance of an appeal was timely filed in the Supreme Court of Appeals of Virginia at Richmond, in which it was asserted that any attempt to levy such a tax violated the due process clause of the Fourteenth Amendment.

The petition for the allowance of an appeal to the Circuit Court of Arlington County, Virginia, was denied on November 27, 1959. Appendix 10a.

ARGUMENT

The Decision in This Case, in Holding That the Cash Was Intangible Personal Property, Is in Direct Conflict With a Decision of This Court

It was necessary that your petitioner file an inheritance tax return in the District of Columbia covering real estate and tangible personal property having its situs in the District of Columbia. The taxing authority of the District of Columbia concluded that the

Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in cash, in a safe deposit box in a bank in the District of Columbia at decedent's death was tangible personal property and as such was subject to its assessment for inheritance tax purposes.

The District based its decision that it was tangible personal property upon the statement contained in the opinion of this Court inthe case of *Blodgett* v. *Silberman*, supra, at page 18 of the official reports, which is as follows:

> "There was a small amount of cash, $287.48, in bank notes and goin in a safe deposit box in New York which the Supreme Court of Errors held not taxable in Connecticut. As to this, the contention on behalf of Connecticut is that it should be treated as attached to the person of the owner and subject to a transfer tax at the domicil. It is argued that it was not like coin or treasure in bulk, but like loose change, so to speak. To money of this amount usually and easily carried on the person, it is said that the doctrine of mobilia sequuntur personam has peculiar application in the historical derivation of the maxim. But we think that money, so definitely fixed and separated in its actual situs from the person of the owner as this was, is tangible property and can not be distinguished from the paintings and furniture held in the Frick case to be taxable only in the jurisdiction where they were."

Your petitioner, in reliance upon this opinion, paid the tax so assessed in the District of Columbia.

Your petitioner further, on the basis of the opinion of the Court in the *Blodgett* case, opposed the imposition of a tax by the Tax Commission of the State of Virginia on the cash in the District of Columbia but the tax was assessed.

The Commonwealth, in its answer to petitioner's application for relief which was filed in the Circuit Court of Arlington County, stated that it had correctly included the sum of Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, consisting of United States currency located in a safe deposit box in the Second National Bank of Washington, D. C., in the total assessment for Virginia inheritance tax purposes. It further states that it was intangible personal property, the situs of which for assessment of Virginia inheritance taxes was at the place of residence of the decedent owner at the time of his death. Appendix 6a.

It is contended that your petitioner property relied upon the decision of this Court in refusing to pay this tax and that the Circuit Court of Arlington County was in error in entering a judgment for the amount of the tax.

The Assessment of an Inheritance Tax by the State of Virginia, Supported by the Judgment of Its Court, on the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars, in Cash, in the District of Columbia, Was a Taking of Property Without Process of Law and in Violation of Petitioner's rights Under the Fourteenth Amendment

Your petitioner, in every way possible, raised the question that the assessment by Virginia of an inheritance tax on the Two Hundred Sixty-Three Thousand One Hundred ($263,100.00) Dollars was a taking of property without due process of law. The Circuit Court held that it was intangible personal property and properly taxable in Virginia. The Supreme Court of Appeals of Virginia denied an appeal with the statement that the order was plainly right. Appendix 10a.

If the decision of the Circuit Court is plainly right then the decision of this Court in *Blodgett* v. *Silberman*, supra, in stating that such cash was tangible personal property, and taxable at its situs, is plainly wrong.

In the case of *Frick, et al.* v. *Pennsylvania*, 268 U. S. 473, 45 S. Ct. Re. 603, is the following, at page 488 of the official reports:

> "The plaintiffs in error are the executors and an interested legatee. They contended in the state court, and contend here, that in so far as the Pennsylvania statute attempts to tax the transfer of tangible personal property having an actual situs in States other than Pennsylvania it transcends the power of that State, and thereby contravenes the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.
>
> "The precise question has not been presented to this Court before, but there are many decisions dealing with cognate questions which point the way to its solution. These decisions show, first, that the exaction by a State of a tax which it is without power to impose is a taking of property without due process of law in violation of the Fourteenth Amendment; secondly, that while a State may so shape its tax laws as to reach every object which is under its jurisdiction it cannot give them any extra-territorial operation; and, thirdly, that as respects tangible personal property having an actual situs in a particular State, the power to subject it to state taxation rests exclusively in that State, regardless of the domicil of the owner."

Again, at page 491, this Court said:

> "Other decisions show that the power to regulate the transmission, administration, and distribution of tangible personal property on the death of the owner rests with the State of its situs, and that the laws of other States have no bearing save as that State expressly or tacitly adopts them—their bearing then being attributable to such adoption and not to any force of their own."

Finally, at page 496, this Court said:

> "For the reasons which have been stated it must be held that the Pennsylvania statute, in so far as it attempts to tax the transfer of tangible personalty having an actual situs in other States, contravenes the due process of law clause of the Fourteenth Amendment and is invalid."

Your petitioner, in good faith, has paid the tax due the District of Columbia, the situs of the cash, upon the basis of the decision of this Court in the *Blodgett* case and it is not necessary to cite further decisions of this Court to support the theory that the assessment of the inheritance tax by the Virginia taxing authority and the judgment of the Circuit Court of Arlington County in the sum of Sixty-Five Hundred Eighty-Two Dollars and Ninety-Three Cents ($6582.93), with interest at one per centum per month from June 30, 1958, until paid, upon the basis that the cash was intangible personal property and subject to the tax in Virginia, was the taking of property without due process of law and in violation of petitioner's rights under the Fourteenth Amendment.

Wherefore, it is respectfully submitted that this petitioner for a writ of certiorari to review the judgment of the Circuit Court of Arlington County, Virginia, should be granted.

CORNELIUS H. DOHERTY
1010 Vermont Ave., N. W.
Washington, D. C.

LAWRENCE W. DOUGLAS
404 Arlington Trust
Building
Arlington, Virginia

HARRY LEE THOMAS
Court House Square
Arlington, Virginia

Attorneys for Petitioner